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Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

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Report of the Secretary-General

Summary

The core provisions of the 1994 Convention on the Safety of United Nations and Associated Personnel have been introduced in a growing number of recently concluded status-of-forces and status-of-mission agreements, thus effectively extending the scope of application of the Convention to United Nations operations in respect of which no declaration was made, or in countries which are not signatories to the Convention.

No declaration of a "risky operation" has so far been made, including in Afghanistan, where the United Nations operation remains risky. Efforts to expand the scope of application of the Convention to all United Nations operations by means of a legal instrument dispensing with the need for a declaration should thus be encouraged.

No request for information in matters relevant to the application of the Convention has been received by the Secretariat. Few States have requested to be provided with the list of NGOs contractually linked to the United Nations and operating in their territories. Such requests have been complied with at both the field and Headquarters levels. In most cases, however, tripartite agreements concluded between the United Nations agency, the Government and the NGO implementing partner have obviated the need for such a request. Finally, since locally recruited personnel remain vulnerable to attacks, additional measures, short of evacuation, have been taken to strengthen their security.

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I. Introduction

1. In its resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, the General Assembly requested the Secretary-General to report to it at its fifty-ninth session on the measures taken to implement the resolution, in particular concerning (a) the inclusion of key provisions of the Convention in future and, if necessary, in existing status-of-forces, status-of-mission and host-country agreements; (b) initiating a "declaration of exceptional risk" for the purpose of article 1 (c) (ii) of the Convention; (c) providing States, upon request, with all available information on matters relevant to the application of the Convention; (d) making available to Member States the names of organizations or agencies that have concluded agreements with the United Nations; and (e) practical measures taken to strengthen the protection of United Nations and associated personnel, including locally recruited personnel.

2. In the same resolution, the Assembly decided that the Ad Hoc Committee established under resolution 56/89 should reconvene with a mandate to expand the scope of legal protection under the Convention, including by means of a legal instrument. The discussions of the Ad Hoc Committee's Working Group at that recent session are contained in the report of the Ad Hoc Committee.[1]

II. Incorporating the key provisions of the Convention into status-of-forces and status-of-mission agreements

3. The number of States parties to the Convention is at present 71. The number of parties in and of itself, however, is not conclusive, because in countries in which United Nations operations other than peacekeeping operations are deployed it would still be necessary for the Security Council or the General Assembly to issue a "declaration of exceptional risk" to trigger the applicability of the Convention in their respect. The need to incorporate the key provisions of the Convention in status-of-forces and status-of-mission agreements in all cases where the host countries are non-signatories to the Convention, or where the necessary "declaration of exceptional risk" has not been issued, remains acute.

4. Since my last report, a number of status-of-forces and status-of-mission agreements incorporating the key provisions of the Convention have been concluded between the United Nations and Member States, including the agreement with the Government of Lebanon regarding the status of military observers of the United Nations Truce Supervision Organization (UNTSO) of 2 July 2003; the agreement with the Government of Liberia concerning the status of the United Nations Mission in Liberia (UNMIL) of 13 October 2003; the agreements with the Government of Côte d'Ivoire on the status of the mission in Côte d'Ivoire (MINUCI) of 18 September 2003 and on the status of the United Nations Operation in Côte d'Ivoire of 29 June 2004 (UNOCI); the agreement with the Government of Haiti concerning the status of the United Nations Operation in Haiti (MINUSTAH) of 9 July 2004, and most recently, the agreement with the Government of Sudan concerning the activities of the United Nations Mission in Sudan of 5 August 2004. The following agreements containing the same provisions are currently under negotiation: an agreement with the Government of Burundi concerning the status of

the United Nations Operation in Burundi (ONUB); and agreements with the Governments of Jordan, Kuwait and Cyprus, respectively, on the status of the United Nations Assistance Mission for Iraq (UNAMI). With the transfer of sovereignty to the Interim Government of Iraq, negotiations of a status-of-mission agreement between the United Nations and Iraq have been initiated with the Interim Government.

III. Initiating a "declaration of exceptional risk" pursuant to article 1 (c) (ii) of the Convention

5. In considering how to respond to the General Assembly's numerous recommendations and requests that I should advise any of the United Nations organs concerned where, in my assessment, circumstances supporting a declaration of exceptional risk exist, I wish to recall the reservations expressed in my previous report (A/58/187) regarding the lack of generally agreed criteria for determining whether there exists a situation of exceptional risk, the timeliness of such a declaration and the political considerations that might be likely to influence a technical assessment of that nature. For those and other reasons, I concluded that I was unable to approach the Security Council or the General Assembly "to suggest that a situation in particular areas where United Nations operations are deployed involve an exceptional risk to the safety of United Nations and associated personnel".

6. While maintaining my general reservations, I nevertheless recommended, in the case of Afghanistan and for the reasons elaborated in my report, that the General Assembly declare that there exists an exceptional risk for the United Nations Operation in Afghanistan. Despite the serious security conditions under which the United Nations Office continues to operate in Afghanistan, no declaration to that effect has yet been made.

IV. Providing information on matters of fact relevant to the application of the Convention

7. Since my first proposal to provide, upon request, information on matters relevant to the application of the Convention, such as the fact and content of any declaration of exceptional risk, the status of any individual or entity under the Convention or any agreement concluded between the United Nations and humanitarian non-governmental organization or agency, no request has been submitted to the United Nations Secretariat by any State or national judicial authority.

V. Providing Member States with the list of NGOs contractually linked to the Organization

8. In my previous report, I expressed readiness to provide, at the request of any State, a list of NGOs operating in any United Nations area of operation and contractually linked to the Organization. Requests by States since then have been rare, and when received they were complied with at both the field and Headquarters

levels. Thus, for example, in October 2003, the Office of the United Nations High Commissioner for Refugees (UNHCR) provided the Permanent Representative of the United States to the United Nations and other international organizations in Geneva with a list of the Office's NGO implementing partners. A list of those NGO partners, both contractual and operational, is posted on the donors/partners segment of the UNHCR public web site. I should also note that, in the practice of the United Nations Development Programme and UNHCR, projects implemented by NGOs are often governed by tripartite agreements to which the United Nations agency in question, the Government and the NGO concerned are parties. In the practice of UNHCR, the NGO must also be legally registered in the country of operation before UNHCR will consider establishing a contractual partnership. In all such cases, therefore, the Government is fully aware of the identity of the implementing NGOs operating in its territory.

VI. Practical measures taken to strengthen the protection of United Nations personnel and locally recruited personnel, in particular

9. As indicated in my first report on the scope of legal protection under the Convention (A/55/637), locally recruited personnel in peacekeeping operations are considered "members of the civilian component of a United Nations peacekeeping operation", and in United Nations offices established away from Headquarters they are considered, with the exception of those assigned to hourly rates, as United Nations officials. For the purposes of the Convention, however, they should be considered as falling within any of the categories of United Nations and Associated personnel, according to the type of their contractual link with the Organization.

10. As a practical matter, with the exception of evacuation from any country in a phase V situation when all internationally recruited staff members of the United Nations system leave, locally recruited personnel other than those assigned to hourly rates are fully integrated in all aspects of the United Nations security management system. They are provided with security training in the form of a CD-ROM on security in the field, as well as training undertaken by mobile training teams and by country-based field security coordination officers. Locally recruited personnel are included in warden systems and are required to comply with all restrictions that are put in place when various phases are declared; if required to work in the field, they are subject to the same minimum operating security standards as international personnel. When necessary, locally recruited personnel and their eligible dependants are relocated to a safe haven within the country.

11. I should emphasize that locally recruited personnel have been particularly vulnerable to attacks of all kinds. In many but certainly not all cases, such attacks against locally recruited staff members take place outside working hours and do not necessarily arise as a direct consequence of their employment by United Nations organizations. Special procedures have been developed for Iraq, where locally recruited staff members, in addition to exposure to the general risks of living in the country, are considered to be exposed to deliberately targeted harassment and attack in connection with their employment.

VII. Observations

12. In my previous report, I observed that the difficulty in the issuance of a "declaration of exceptional risk" remains the single most important limitation to the protective regime of the Convention. The reluctance to issue such a declaration upon my recommendation in the case of Afghanistan evidences such a difficulty. In that report, I also recommended that "serious consideration should be given to dispensing with the need for a declaration as a condition for the application of the Convention". I am, therefore, encouraged by efforts made by Member States to expand the scope of application of the Convention to all United Nations operations by means of a legal instrument dispensing entirely of the need for a "declaration".

13. In its efforts to broaden the scope of application of the protective regime of the Convention, however, the General Assembly should also continue to bring pressure to bear upon Member States to prosecute those responsible for crimes against United Nations and associated personnel, thus ensuring the full application of the Convention both in theory and in practice.

Notes

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 52* (A/59/52).